

**FEDERAL COMMUNICATIONS COMMISSION**

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Nassau Broadcasting III, L.L.C.  
619 Alexander Road  
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Princeton, NJ 08540

In Re: Nassau Broadcasting III, L.L.C. ("Nassau")

WWOD(FM), Keeseville, NY  
Facility ID #20606  
BPH-20070105ADQ

WXLFFM), Hartford, VT  
Facility ID #17801  
BPH-20070105ADO

Dear Applicant:

This letter is in reference to: (1) Nassau's above-captioned minor change application BPH-20070105ADQ to change the community of license from Hartford, VT to Keeseville, NY, and modify the effective radiated power, antenna height and location; (2) Nassau's above-captioned minor change application BPH-20070105ADO to change the community of license from White River Junction, VT to Hartford, VT, and modify the effective radiated power and antenna height; (3) the Informal Objection filed on March 8, 2007 by Hall Communications, Inc. ("Hall"); and (4) all other related pleadings. In addition, Nassau requests a waiver, for both WWOD and WXLFFM, of the 90-day deadline for filing its minor change construction permit applications to effectuate the changes in the FM Table of Allotments adopted by the Commission in its Report and Order dated May 12, 2006 ("Order").<sup>1</sup> For the reasons set forth below, we deny the informal objection, and grant Nassau's waiver request and applications.

***Waiver Request.*** On May 12, 2006, the Commission released the Order providing Nassau 90 days from June 26, 2006, the effective date of the Order, to submit a minor change application for construction permit on FCC Form 301. Therefore, Nassau's deadline for filing was September 25, 2006. On January 5, 2007, over three months after the deadline, Nassau filed contingent applications for WWOD and WXLFFM to effectuate the Order. Nassau acknowledges the tardiness of its filings and requests waiver of the filing deadline.

In support of its waiver request, Nassau states that it erroneously relied on the former provisions of the rules that provided for an automatic stay of the change in the community of license change pending the

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<sup>1</sup> *Enfield, New Hampshire, Hartford and White River Junction, Vermont, and Keeseville and Morrisonville, New York, Report and Order*, 21 FCC Rcd 5136 (MB 2006).

disposition of a petition for reconsideration. In addition, Nassau claims that this error will not cause harm to any other applications because no other applicant may file an application for a station on the channels allotted for WWOD and WXLF. Moreover, Nassau argues that a waiver is appropriate because it will allow Nassau to provide new service to Keeseville, NY and continue to provide service to Hartford, VT, services that the Commission has already determined are in the public interest. Therefore, Nassau concludes that its request for waiver is justified in this instance.

**Informal Objection.** On March 8, 2007, Hall filed an informal objection stating that the Nassau applications were filed untimely as required by the Order and Nassau has failed to demonstrate that a waiver is warranted in this case. In addition, Hall indicates that the FCC's "stay" rule was eliminated in 1996, and it strains credulity that, ten years later, the application was not on file because Nassau believed the rule was still in effect. Furthermore, Hall argues that Nassau's arguments do not erase the simple fact that it failed to meet a specific condition imposed in the Order, and that such failure reverses the changes authorized in the rulemaking. Accordingly, Hall argues that the Commission should deny the request for waiver, dismiss the applications, and update its database to properly reflect the vacant allotment of Channel 231A at Keeseville, NY.

**Discussion.** We disagree with Hall's arguments. The fact that the applications were filed late does not negate the changes in the rulemaking. The late filing of the applications was harmless and does not change the Commission's determination that the changes granted in the rulemaking are in the public interest. The proceeding is terminated and Nassau is the only party eligible to file for the allotment. Moreover, the Commission routinely grants minor change modification applications to effectuate community of license changes that are filed outside of the prescribed filing window. Finally, Hall has failed to demonstrate any substantial and material question of fact that would require denial of the application. Therefore, we will deny Hall's informal objection and grant Nassau's waiver request.

**Conclusion.** When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded Nassau's waiver request the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented here are sufficient to warrant waiver. We conclude that Nassau's request for waiver is in the public interest. In light of the above, Hall's Informal Objection filed on March 8, 2007 IS HEREBY DENIED and Nassau's request for waiver of the 90-day deadline for filing its minor change construction permit applications and its applications ARE HEREBY GRANTED. These actions are taken pursuant to 47 CFR Section 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodolfo F. Bonacci". The signature is fluid and cursive, with a large initial "R" and a stylized "B".

Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Stephen Diaz Gavin, Esq.  
Susan A. Marshall, Esq.  
Lee G. Petro, Esq.